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10 *Attorneys for Plaintiffs*
    Pro Hac Vice Motions Forthcoming
11

12   UNITED STATES DISTRICT COURT

13   EASTERN DISTRICT OF CALIFORNIA

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15 ALEJANDRO FLORES;

16 DANIEL FLORES;

17 JULIETTE COLUNGA; and

18 YOUNG AMERICANS FOR FREEDOM AT
19 CLOVIS COMMUNITY COLLEGE,

20   Plaintiffs,
21   v.   Civil Action No. 1:22-cv-01003-JLT-HBK

22 DR. LORI BENNETT, in her individual and   **PLAINTIFFS' MOTION FOR**
    official capacities as President of Clovis **PRELIMINARY INJUNCTION**
23 Community College;

24 MARCO J. DE LA GARZA, in his individual   Date: September 16, 2022
    and official capacities as Vice President of Time: 9:00am
25 Student Services at Clovis Community   Judge: The Honorable Jennifer L. Thurston
26 College;

27 GURDEEP HÉBERT, in her individual and
    official capacities as Dean of Student Services
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1   at Clovis Community College; and

2   PATRICK STUMPF, in his individual and
3   official capacities as Senior Program
    Specialist at Clovis Community College,
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        Defendants.
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7   Pursuant to Federal Rule of Civil Procedure 65(a) and Local Rule 231(d), Plaintiffs

8   Alejandro Flores, Daniel Flores, Juliette Colunga, and Young Americans for Freedom at Clovis

9   Community College ("Plaintiffs") respectfully submit this Motion for Preliminary Injunction. In

10 support of this motion, Plaintiffs state as follows:

11   1.   On August 11, 2022, Plaintiffs filed this lawsuit alleging five claims against

12 Defendants. Plaintiffs' Verified Complaint challenges the constitutionality of Clovis Community

13 College's Flyer Policy.

14   2.   The Flyer Policy requires that all flyers not created by Clovis Community College

15 departments or divisions "must be approved and stamped by the Clovis Community College

16 Student Center Staff" prior to posting. Failure to obtain preapproval "will result in

17 unapproved/unstamped flyers being removed and thrown away." The Flyer Policy further states:

18 "Posters with inappropriate or offens[ive] language or themes are not permitted and will not be

19 approved."

20   3.   As detailed in the accompanying memorandum of law, Plaintiffs are entitled to a

21 preliminary injunction enjoining Defendants from enforcing Clovis Community College's Flyer

22 Policy because Plaintiffs are likely to succeed on the merits of their challenges to the Flyer

23 Policy.

24   4.   First, the Flyer Policy creates an unconstitutional prior restraint on student speech,

25 a type of restriction highly disfavored under the First Amendment, without any kind of procedural

26 safeguard by which the government must either meet the burden of proving in an adversarial

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MOTION FOR PRELIMINARY INJUNCTION

1   proceeding that the speech is unprotected or permit the speech within a specified, brief period.

2   *See Freedman v. State of Md.*, 380 U.S. 51, 58–59 (1965).

3   5.   Second, by prohibiting "inappropriate or offens[ive] language or themes," the

4   Flyer Policy facially discriminates based on viewpoint, *see Matal v. Tam*, 137 S. Ct. 1744, 1757

5   (2017) (plurality), and is incapable of reasoned application, in violation of the First Amendment.

6   *See Minn. Voters All. v. Mansky*, 138 S. Ct. 1876, 1892 (2018).

7   6.   Third, the Flyer Policy's ban on "inappropriate or offens[ive] language or themes,"

8   is impermissibly overbroad, resulting in a substantial number of applications that violate the First

9   Amendment. *See Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 657 F.3d

10   936, 944 (9th Cir. 2011).

11   7.   Fourth, by permitting administrators to reject posters that contain "inappropriate or

12   offens[ive] language or themes," the Flyer Policy is unconstitutionally vague because it fails to

13   give students notice of what expression is prohibited and invites arbitrary enforcement by giving

14   administrators unbridled discretion in violation of the First and Fourteenth Amendments. *See*

15   *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

16   8.   Fifth, the Flyer Policy is unconstitutional as applied to Plaintiffs' speech because

17   Defendants' actions in enforcing the policy discriminated against Plaintiffs' speech based on

18   viewpoint.

19   9.   Moreover, the chilling effect on Plaintiffs' expressive and due process rights

20   constitutes irreparable harm.

21   10.   Additionally, the balance of equities favors Plaintiffs, as Defendants cannot

22   present any interest that outweighs Plaintiffs' interest in the enjoyment of their constitutional

23   rights.

24   11.   Granting a preliminary injunction would also further the public interest because it

25   would protect the expressive and due process rights of hundreds of other Clovis Community

26   College students.

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1   12.   Finally, this Court should waive Rule 65(c)'s bond requirement because this is a

2   public-interest lawsuit and imposing a preliminary injunction poses no risk of financial loss to

3   Defendants.

4   13.   Accordingly, Plaintiffs respectfully request that this Court preliminarily enjoin

5   Defendants from enforcing the following provision of the Clovis Community College Flyer

6   Policy: "Posters with inappropriate or offens[ive] language or themes are not permitted and will

7   not be approved."

8   14.   Plaintiffs further request that this Court preliminarily enjoin Defendants from

9   taking any action to deny Plaintiffs the ability to post flyers on indoor bulletin boards or

10 anywhere else Clovis Community College permits students to post flyers, because Defendants or

11 others deem the flyers "inappropriate" or "offens[ive]."

12   15.   Pursuant to Local Rule 231(d)(3), Plaintiffs respectfully request a hearing on this

13 motion. Plaintiffs can present oral testimony, if the Court would find that useful. Plaintiffs

14 anticipate one hour will be required for a hearing without testimony.

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16 Dated: August 11, 2022

17   Respectfully submitted,

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19   /s/ Daniel M. Ortner
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CERTIFICATE OF SERVICE

3   I, Daniel M. Ortner, hereby certify that on August 11, 2022, I submitted the foregoing to

4   the Clerk of the Court via the District Court's CM/ECF system, and this document will be served

5   personally on all Defendants with the Complaint.

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7   /s/ Daniel M. Ortner
                                           DANIEL M. ORTNER

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MOTION FOR PRELIMINARY INJUNCTION